



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Henry C. Kyle
County Attorney
Hays County
San Marcos, Texas

Dear Sir:

Opinion No. C-1974
Re: Section 9 of Article 8, Texas
Constitution - Permanent Improve-
ment Funds - County Clerk's Record
Books - Article 6675a-10, Revised
Civil Statutes - Transfer of funds.

Your request for opinion upon the following
questions:

"1. May record books for the office of
the County Clerk of Hays County, Texas be
paid for out of the constitutional improve-
ment fund?

"2. May automobile registration fees
under Article 6675a-10, Revised Civil Statutes
of Texas, be legally transferred from the road
and bridge fund of Hays County, Texas to the
general fund of said county?"

has been received and carefully considered by this depart-
ment.

Section 9 of Article 8 of the Texas Constitution
reads as follows:

"The State tax on property, exclusive of
the tax necessary to pay the public debt, and
of the taxes provided for the benefit of the
public free schools, shall never exceed thirty-
five cents on the one hundred dollars valua-
tion; and no county, city or town shall levy
more than twenty-five cents for city or county

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purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25th, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax-paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws."

Article 2352, Revised Civil Statutes, referring to the commissioners' court, reads as follows:

"Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the Constitution, September 25, A. D. 1883, and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five

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cents on the one hundred dollars valuation in any one year, and except as in the Constitution otherwise provided. They may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollar valuation of the property subject to taxation, under the limitations and in the manner provided for in Article 8, Sec. 9, of the Constitution and in pursuance of the laws relating thereto."

Article 6593, Revised Civil Statutes, reads as follows:

"Each county clerk shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof. Such accounts shall be audited by the commissioners court and paid out of the county treasury."

Section 9 of Article 8 of the Texas Constitution, above quoted, prescribes the maximum rate of taxes for general purposes, for roads and bridges, for juries, and for the erection of public buildings, streets, sewers, water works and other permanent improvements. The immediate purpose of said provision of the Constitution is to limit the amount of taxes that might be raised for the several purposes; but it is also designated to inhibit excessive expenditures for any such purpose, and to require that any and all monies raised for taxation shall be applied to that particular purpose and no other. See the case of Ault vs. Hale County, 116 SW 359.

The case of Carroll vs. Williams, 202 SW 504, holds, among other things, that the Constitution contemplates that, as a matter of common honesty and fair dealings, tax money taken from the people ostensibly for one purpose shall be expended for that purpose alone, as well as the tax rate, for that particular class, shall not exceed the prescribed maximum.

The case of Henderson County vs. Burke, 262 SW 94, holds, among other things, that the statute requires that any and all money raised by taxation for any such

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purpose shall be applied, faithfully to that particular purpose, as needed therefor, and not to any other purpose or use whatsoever, See Article 2352, Revised Civil Statutes.

Opinion No. 0-1810 of this department holds that money from the permanent improvement fund cannot be legally used to purchase road machinery.

We call your attention to the following language in Section 9 of Article 8 of the Constitution, to-wit:

"for the erection of public buildings, streets, sewers, water works and other permanent improvements."

Under the familiar rule of construction known as "ejusdem generis", record books of the county clerk could not be reasonably construed to be an "other permanent improvement."

In answer to your first question you are respectfully advised that it is the opinion of this department that the same should be answered in the negative and it is so answered.

With reference to your second question, we respectfully call your attention to the following pertinent provisions of Section 10 of Article 6675a, Revised Civil Statutes, to-wit:

"None of the monies so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any county judge or county commissioner, but all said monies shall be used for the construction and maintenance of lateral roads in such county under the supervision of the county engineer, if there be one, and if there is no such engineer, then the county commissioners' court shall have the authority to command the services of the division engineer of the State

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Highway Department for the purpose of supervising the construction and surveying of lateral roads in their respective counties. All funds allocated to the counties by the provisions of this act (Arts. 6675a-1 to 6675a-14; Penal Code Art. 807a) may be used by the counties in the payment of obligations, if any issued and incurred in the construction of and improvement of all roads, including State Highways of such counties and districts therein; or of the improvement of the roads comprising the county road system."

Opinion No. 0-1161 of this department, holds that the commissioners' court of Gregg County, Texas, cannot legally transfer monies received from automobile registrations to the officers' salary fund of the county, regardless of the status of the general fund of said county.

Section 10 of Article 6675a, supra, specifically provides how such funds shall be expended and such provisions are clear and unambiguous.

In answer to your second question, you are respectfully advised that it is the opinion of this department that the same should be answered in the negative, and it is so answered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Wm. J. Fanning
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Assistant

WJF:AW

APPROVED MAR 5, 1940

Turner
ATTORNEY GENERAL OF TEXAS

